



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411

BOSTON, MASSACHUSETTS 02108

(617) 727-8352

(800) 462-OCPF

MICHAEL J. SULLIVAN

DIRECTOR

August 18, 1995
AO-95-29

Richard A. Vasconcellos
City Treasurer-Collector
City of Fall River
One Government Center
Fall River, MA 02722

Re: Payroll deductions for political contributions

Dear Mr. Vasconcellos:

This letter is in response to your August 1, 1995 request for an advisory opinion regarding the implementation of a payroll deduction plan administered by the City of Fall River ("the City") to benefit a federal political action committee.

You have been asked to initiate and administer a payroll deduction plan to allow City employees to make contributions, by payroll deduction, to the American Federation of State, County and Municipal Employees' political action committee ("the PAC"). The payroll deduction plan would not be required as part of a collective bargaining agreement between the City and any union or other organization representing the City's employees.

You have stated that City resources would be used since each payroll clerk of a City department will code the amount of a deduction. Also, public resources will be used in remitting deduction checks and producing a detailed listing of contributors and the amount contributed, on a bi-weekly or monthly basis.

You have asked if the payroll deduction plan would be consistent with the Massachusetts campaign finance law, M.G.L. c. 55, which specifically prohibits the solicitation or receipt of political contributions by public employees, the raising of funds in buildings occupied for a municipal purpose, and the delivery of political contributions by one public employee to another. See M.G.L. c. 55, sections 13, 14 and 15.

For the reasons which follow, the payroll deduction plan would not be consistent with the Massachusetts campaign finance law.

In light of sections 13, 14 and 15, as well as other provisions in chapter 55, the Supreme Judicial Court has stated that chapter 55 "demonstrate[s] a general legislative intent to keep political fund raising and disbursing out of the hands of nonelective public employees and out of city and town halls." Anderson v. City of Boston, 376 Mass. 178, at 186-187. Therefore, this office has concluded that the campaign finance law prohibits the use of any public resource for any political purpose. See IB-91-01 (summarizing this office's interpretation of the Anderson decision).

Public resources include, but are not limited to staff time, office space, stationery and office supplies, office equipment such as telephones, copiers, fax machines, computers and word processors, as well as the use of a state, county or municipal seal. Therefore, even if the only support provided by a municipality is the receipt of a deduction form and the preparation of a check to be provided to the PAC, we would conclude that public resources have been used.

We understand that collective bargaining agreements entered into between some governmental units and public employees' unions require the governmental unit to utilize a payroll deduction plan which provides contributions to PACs. Deductions might also be required for other purposes, for example, for charitable contributions or union dues. We do not need to decide, at this time, whether payroll deduction plans to benefit PACs are consistent with Anderson, since your question does not reflect the existence of such an agreement mandating the plan in Fall River. However, if a governmental unit provides such services in accordance with a collective bargaining agreement with a union or other representative of the unit's employees, the services, it might be argued, would not be provided primarily for a political purpose.¹

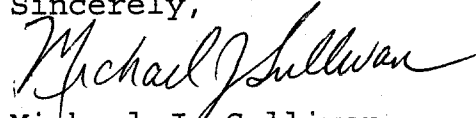
In any event, since the City of Fall River would be using its resources on its own initiative, for the purpose of assisting a political action committee, and since such use of public resources is not mandated as part of a collective bargaining agreement, we would deem the use to be for a political purpose. Therefore, based on the facts stated in your letter, we would conclude that the payroll deduction system would not be consistent with the campaign finance law.

¹ Assuming a plan initiated and administered in accordance with a collective bargaining agreement is consistent with Anderson, the plan would also have to comply with sections 13 through 15 of chapter 55 of the General Laws. Specifically, the plan could not involve: (1) the solicitation or receipt of contributions in buildings occupied for municipal (or other governmental) purposes; (2) the solicitation or receipt of contributions by any person employed by the commonwealth or any of its subdivisions; or (3) the delivery or acceptance of any contribution by one person in the service of the commonwealth or any of its subdivisions from any other person in the service of the commonwealth or one of its subdivisions.

Richard A. Vasconcellos
August 18, 1995
Page 3

This opinion has been rendered solely on the basis of representations made in your letter and conversations with staff from this office, and solely in the context of M.G.L. c. 55. Please do not hesitate to contact to call if you have additional questions about this or any other campaign finance matter.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan". The signature is written in dark ink and is positioned above the printed name and title.

Michael J. Sullivan
Director

MJS/cp